

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

<b>DERRICK (“RABBIT”) LOWERY, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:05-CV-560</b>
	)	<b>(Phillips)</b>
<b>MARTY EUVERARD, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

This matter came before the court on defendants’ motion for stay of trial proceedings pending appeal to the Sixth Circuit Court of Appeals [Doc. 77]. Specifically, defendants move for a stay of all trial proceedings, including discovery, whether written or by oral deposition, based on the established principle that once the appeal is filed, the district court is divested of jurisdiction to conduct the trial until the qualified immunity issue is resolved. *Yates v. City of Cleveland*, 941 F.2d 444, 449 (6<sup>th</sup> Cir. 1991).

Plaintiffs have responded in opposition, requesting the court to certify the defendants’ appeal as frivolous in order that the trial of this case may proceed on October 23, 2006. In the alternative, plaintiffs request that the trial be allowed to proceed against the Jefferson County Board of Education only.

The court finds that denial of defendants’ motion to stay could result in a duplication of judicial resources should the case have to be tried twice – once against the Board of

Education, and a second time against the individual defendants. To proceed with trial against the Board of Education will unavoidably involve the direct and extensive participation of the individual defendants. Thus, to proceed with the trial in this court while the individual defendants' qualified immunity appeal is pending in the Sixth Circuit Court of Appeals would undermine the very purpose of the qualified immunity defense by forcing these government employees to undergo the rigors of discovery and trial when the appellate court may well find them immune from such procedure. For these reasons, the court declines to certify defendants' appeal as frivolous.

It appears to the court that this case should be **STAYED** pending the decision of the Sixth Circuit Court of Appeals on the interlocutory appeal of the court's denial of qualified immunity for the defendants. Accordingly, defendants' motion for stay of trial proceedings pending appeal to the Sixth Circuit Court of Appeals [Doc. 77] is hereby **GRANTED**.

The trial of this matter scheduled for October 23, 2006 is **CANCELLED**.

**IT IS SO ORDERED.**

**ENTER:**

s/ Thomas W. Phillips  
United States District Judge